In the High Court of Judicature for Rajasthan

Jaipur Bench

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1-Cr. Msc. Petition No.867/2007
Banwari & (15) Others ***Versus*** State & Mawasiram
2-Cr. Msc. Petition No.856/2007
Banwari & (17) Others ***Versus*** State

Date of Order ::: 14/11/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. S.K.Gupta)
Mr. Himmat S.Bikanwar)for petitioners (accused)
Mr. Arun Sharma, Public Prosecutor .
Mr. Rajesh Chodhary for Mr. Biri Singh for respondent

Since these two petitions raise common question, at joint request, were finally heard and are being disposed of by this order at admission stage.

Cr. Msc. Petition No.867/07 has been filed by 16 accused against whom Judicial Magistrate Nagar (Bharatpur) took cognizance of offence U/s 307/34, IPC, in Cr.Case-195/06 (FIR -13/05 PS Nagar lodged by Mawasi complainant), vide order dt.21/06/06, duly upheld by Addl. Sess. Judge No.2, Deeg vide order dt.11/05/07 in Cr.Rev. 16/06.

Cr. Msc Petition No.856/07 has been filed by 18 accused against whom Judl. Mag. Nagar (Bharatpur) took cognizance of offence U/s 307/34,

IPC, in Cr.Case-196/06 (FIR-14/05 PS Nagar lodged by Lakhan Singh Head Constable), vide order dt. 21/06/06, duly upheld by Addl. Sess. Judge No.2, Deeg vide order dt.11/05/07 in Cr. Rev.15/06.

Two written reports came to be lodged by (1) Mawasi complainant respondent No.2 (FIR No.13/05) and (2) by Head Constable (FIR-14/05) at police station Nagar on 31/01/05 for one and self same incident having taken place on the very day, alleging inter-alia that while Panchayat elections were being held on 31/01/05 and on return after casting votes by family members of complainant party, the accused party duly armed with fire-arms, lathi, pick-axe (Farsa), with an unlawful assembly having common intention to cause death and grievous injuries to them and as per version given out in report lodged at the instance of police constable, polling and police party both were given beatings by pelting stones, using fire-arms & muscle power for booth capturing, in order to cause hindrance in election despite the fact that the SDM had asked security gaurds to open fire-shots in the air with a view to restrain mob gathered of accused party – as a result whereof, polling & police personnel sustained grievous injuries, besides other voters having come forward

to cast their votes in Panchayat elections. On the basis of aforesaid versions, two FIRs (No.13/05 for offences U/Ss 147, 148, 149,323, 307, 379) while No.14/05 for offences U/Ss 147, 148,149, 307, 323 & 336,IPC) were registered at PS Nagar but challan was filed by police for offences U/Ss 147, 148, 149, 323, 341, 336, 325,IPC in FIR-13/05 while U/Ss 147, 148,149, 332, 353, 336,IPC in FIR-14/05.

It is pertinent to state here that challan was not filed for offence U/s 307, IPC in both the FIRs and at this stage, protest petition was filed and taking note whereof besides medico legal reports of injured persons and statements U/s 161 CrPC recorded during investigation, observed that there is suspicion of commission of offences U/s 307/34 IPC on the part of petitioners in both the FIRs, thus learned Magistrate took cognizance of offence U/s 307/34, IPC besides other offences for which challan was filed by police, and summoned accused party through non-bailable warrants while rejecting their bail granted by police U/s 437(5), CrPC, vide orders dt.21/06/06 – against which petitioners preferred Cr.Rev.Petition-15/06 & 16/06 but were dismissed by Court of Revision vide orders dt.11/05/07.

Hence these petitions.

Basic & foremost contentions urged by Counsel for petitioners is that neither fire-arms were recovered, nor any one was injured by using such firearms, as alleged in the FIRs and there are no circumstances which may draw inference of intention to cause grievous injuries resulting into causing death of any injured – in absence whereof, no offence U/s 307, IPC is made out; as such the very order taking cognizance of offence U/s 307/34 IPC, deserves to be set aside.

Public Prosecutor duly associated by Counsel for complainant while supporting order impugned jointly submit that if there is an intention coupled with overt-act in execution thereof, which is sufficient to be considered for taking cognizance of offence U/s 307, IPC against the accused; as such no error has been committed by learned Magistrate while taking cognizance against petitioners. In support, Counsel placed reliance upon decisions of Apex Court in **R State ofMadhya Pradesh Vs. Kedar Yadav (2007(1) Crimes 315(SC)**.

This Court has considered rival contentions of both the parties and with their assistance, pondered over material on record.

Learned trial Court while taking cognizance of offence U/s 307/34, IPC, has taken note of statements U/s 161, CrPC and medico-legal report besides averments made in protest petition in which it was specifically stated by witnesses that on 31/01/05 the accused party came in the form of mob and started pelting stones on the election polling and police party and they intended to kill by using fire-arms held by them in their hands, as well and since the situation was not in control, the Sub Divisional Magistrate had no option except to order the police party to use firearms and in all nine rounds were fired in the air in order to save lives of polling & police party employed to conduct panchayat elections at the place of occurrence; and that apart, all of them stated in their statements U/s 161 CrPC about accused party having fire-arms in their hands and duly armed with sharp-edged and blunt weapons, as well. Taking note of all these statements, cognizance of offence U/s 307/34, IPC was taken by trial Court against petitioners and the Court of Revision has examined in detail and observed that mere suspicion of offence is sufficient at the stage of taking cognizance.

In **State of Madh. Pradesh Vs. Kedar Yadav**

(supra), Apex Court observed that circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307, IPC because determinative question is intention or knowledge, as the case may be, and not nature of the injury. The Apex Court observed ad infra:

> "**15**. To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. **It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted**. What the Court has to see is whether the act, irrespective of

> its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
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> **16.** It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. **It is not essential that bodily injury capable of causing death should have been inflicted**. The Section makes a distinction between the act of the accused and its result, if any. **The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.** Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

In the light of decision of Apex Court (supra), it is manifest that even in the absence of injury of firearms, offence U/s 307 IPC prima facie can be made out; and the Court has to see whether the act, irrespective of its result, was done with the

intention or knowledge and not the nature of injury.

In view of what has been legally propounded (supra), this Court is of the opinion that the Magistrate has not committed any error in taking cognizance against petitioners for offences (supra).

As regards issuance of arrest warrants, this Court considers it appropriate that as soon as petitioners surrender before the trial Judge, their bail application may be simultaneously considered in accordance with law.

With the directions (supra), these misc. petitions fail and are hereby dismissed.

(**Ajay Rastogi), J.**

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